Among the other factors is his affidavit in these proceedings dated the 24th of July in which he repeats some of his contempts (including one particularly offensive passage) and underlines them in red as being true. Another is his oral evidence when some of the more objectionable passages in the letter, which are not underlined in red in his affidavit, were put to him, and his answers that the allegations made therein are true. A third factor is the far from unequivocal character of his apologies and withdrawals — particularly in that part of his evidence which starts at the beginning and ends with the luncheon adjournment — which seemed to me to reveal a failure to appreciate his position. It is only because I was so strongly impressed by his failure in that regard that I have thought it right, in his interest, to refer to these matters now. They are not strictly relevant to my determination of this application. But they will be most relevant when the respondent comes before this Court to answer for his contempt. And before that happens I wish to leave no doubt in the minds of the respondent or his advisers that both by his affidavit and by his oral evidence he has, in my judgment, aggravated his contempt.

There must be an Order in terms of the Motion. Writ to lie in the Registry for 7 days. Liberty to apply. Question of costs reserved to Tuesday the 9th September at 10 a.m.

*Order Accordingly.*

## LEE PIAH CHEE AND ANOTHER v. SIM CHAI SOON.

[App. Civil Juris. (Brown, J.) September 3, 1947]

*Increase of Rent (Restriction) Ordinance 1939 Sections 8 and 15 — Premises sublet without previous consent of landlord — Meaning of "possession".*

The first appellant in this case was the tenant of certain premises let to him by the respondent. He subsequently sublet it to the second appellant but without the written consent of the respondent. In an action for possession instituted by the respondent, in the District Court, judgment was given against the two appellants, who thereupon appealed.

**Held,** (1) that Sections 8 and 15 of the Increase of Rent (Restriction) Ordinance only apply to protect a tenant in possession and as the first appellant was not in actual possession he was not protected by the Ordinance; (2) that the second appellant was not protected as there was no priority of contract between him and the respondent — landlord nor was there any permission in writing for the premises to be sublet as was required by Section 4 of the Ordinance.

*APPEAL* from District Judge (Civil).

*G. C. Toh* for the Appellants.

*D. S. Marshall* for the Respondents.

**Brown, J.** in an oral judgment said:— The only ground of appeal left to be determined is the question whether the learned D. J. correctly interpreted sections 8 and 15 of the Ordinance in their application to this case. But it is well-established by the authorities that sections 8 and 15 only apply to protect a tenant who is in possession. The first appellant was not in possession. He was living in another part of the premises having let the material part to the 2nd appellant.

The 2nd appellant is not protected because there is no privity of contract between him and the plaintiff, nor was there any permission in writing for the premises to be sublet as is required by section 4 of the Ordinance.

The appeal must be dismissed with costs.

*Appeal Dismissed.*

## ESTATE & TRUST AGENCIES (1927) LTD. v. SIM TENG CHEW.

[App. Civil Juris. (Murray-Aynsley, C.J.) August 26, 1947]

*Increase of Rent (Restriction) Ordinance, Section 3 — Whether the Crown is bound by this Ordinance — Crown Lands Encroachments Ordinance.*

The appellants, who were the executors and trustees of the Estate of Tan Cheng Kee (deceased) held a lease of the land in question in this case which expired in September, 1943. On this land had been erected theatres for the exhibition of cinematograph films. By the terms of the lease the appellants were entitled to remove the buildings before the expiration of the lease but the Japanese authorities did not permit it. After the expiration of the lease, the Japanese authorities issued a temporary occupation licence, and this practice continued after the re-occupation until it was determined on 30th January, 1947, subject to 7 days notice. Later a warrant for dispossession was issued by a Police Court against the appellant and against this order they appealed. It was argued for the appellants that the Crown was bound by the Increase of Rent (Restriction) Ordinances, and that therefore the appellants did not lose the protection given by these Ordinances to them as tenants in possession, even though an agreement is entered into which purports to convert the tenancy into a licence.

**Held,** that the Crown is not bound by the Increase of Rent (Restriction) Ordinance and that therefore the warrant for dispossession was rightly issued.

*Cases referred to:* —

(1) *Warren v. Smith (The Magdalen College Case)* 1 Rol. Rep. 151.
(2) *Smithett v. Blythe* 109 E.R. 876.
(3) *Hornsey v. Hennell* (1902) 2 K.B. 73.
(4) *Cooper v. Hawkins* (1904) 2 K.B. 164.
(5) *Gorton Local Board of Health v. Prison Commissioners (reported in* [1902] 2 K.B. 165 (n)).
(6) *Moore v. Smith* 120 E.R. 1034.
(7) *Attorney General for the Duchy of Lancaster v. Moresby* (1919) W.N. 69.

(8) *Attorney General v. Hancock* (1940) 1 K.B. 427.

(9) *Minister of Health v. Berlotti* (1944) 1 K.B. 298.

(10) *Canadian Pacific Ry. Co. v. The King* (1931) A.C. 414.

*APPEAL* from Police Court.

*D. K. Walters* and *T. W. Ong* for the Appellants.

*C. H. Butterfield* (Solicitor-General) for the Respondent.

**Murray-Aynsley, C. J.** : — This is an appeal from an order of the Magistrate Court under section 3 (1) of Cap. 114.

The history of the matter is as follows :—

The appellants held a lease of the land in question which expired in September, 1943. Buildings, to wit theatres intended for the exhibition of cinematograph films, were erected by the appellants or their predecessors in title. By the terms of the lease the appellants were entitled to remove the buildings before the expiration of the lease but the Japanese authorities did not permit it. After the expiration of the lease the Japanese authorities issued a temporary occupation licence, and this practice continued after the re-occupation until it was determined on 30th January, 1947, subject to 7 days notice.

Subject to the question of whether this notice is sufficient, this is a valid notice provided that the appellants were in point of fact licensees at the material time.

Whether the appellants were licensees or tenants depends upon whether the Crown is bound by the Increase of Rent (Restriction) Ordinances. If the Crown is bound by the Ordinances I should be prepared to hold that a tenant, as long as he remains in possession, does not lose the protection given by these Ordinances, even though an agreement is entered into which purports to convert his tenancy into a licence.

The Crown is not expressly stated to be bound by the Ordinances. It has to be considered whether the Crown is bound by implication. For this purpose section 3, as amended, is the relevant one and which reads :—

> 3. (1) This Ordinance shall apply to all premises in the Colony except such premises as the Governor in Council may declare by notification in the Gazette not to be affected by the provisions of this Ordinance.
>
> (2) The expression "premises" shall be deemed to include and, as from the first day of July, 1940, to have included the land on which any moveable building falling within the definition of premises stands and the provisions of this Ordinance shall apply to any such land as if the date "the first day of July, 1940" were substituted for the date "the first day of August, 1939:
>
> Provided that nothing in this subsection shall apply to Crown land or to any land which is vested in or acquired by or on behalf of any Municipality for the purposes of the Municipal Ordinance or the Singapore Improvement Trust for the purposes of the Singapore Improvement Ordinance.

"The rule", according to *Maxwell*, "is commonly stated in the form that the Crown is not bound by a statute unless it is directly or by necessary implication referred to".

I do not think that the older cases, such as the *Magdalen College*[1] case, have any value at the present time. In cases such as the present, normal rules of interpretation would be based on the principle of *expressum facit cessare tacitum*, but decided cases show that the presumption against the Crown being bound is stronger.

Modern cases on the subject begin with *Smithett v. Blythe*[2]. That decision, it should be noted, was based on highly technical grounds. "But as the exception must be out of that which is previously granted, it cannot operate by intendment to impose a charge which the words of the grant are not extensive enough to comprehend" (p. 880). This is to say that an exception out of a grant of tolls could not be taken as implying the grant of something which had not been included in the principal grant.

Though, as Mr. Walters has pointed out, the basis of the decision was only applicable to a grant of tolls, it seems to have been the prevailing authority in subsequent cases which have nothing to do with tolls, as the *Hornsey case*[3], *Cooper v. Hawkins*[4], and the *Gorton*[5] case reported as a footnote to *Cooper v. Hawkins*. In this last case I take the statement of the law by Day J., at p. 167, as the present ruling authority: "In the absence of express words the Crown is not to be bound, nor is the Crown to be affected except by necessary implication. There are many cases in which such implication does necessarily arise, because otherwise the legislation would be un-meaning. That is what I understand by 'necessary implication' ". An example of this would be legislation dealing with criminal procedure which could not have any effect at all if it did not bind the Crown.

In this matter an extreme view has prevailed and the only modern cases I can find where a different canon has been applied are *Moore and Smith*[6], and *Attorney-General for Duchy of Lancaster v. Moresby*[7]. The latter case was not followed by Wrottesley J. in *Attorney-General v. Hancock*[8]. It seems to have been based on the ground that the Act in question was

for the "suppression of wrong". A view based on ancient cases that is, in my opinion, now obsolete. *Moore and Smith* is very scantily reported. It has not been expressly overruled but its application seems to have been limited to the particular statute which it interpreted. I think that at the present time the decision would have been the other way.

Basing my decision on the current trend of judicial opinion in England I hold that the Crown is not bound by this Ordinance. I am well aware that the House of Lords may at some time reverse the present trend and decide the contrary.

That being the case, the only remaining question is whether the notice terminating the licence was sufficient. Both by common law and the Land Office rules notice is necessary. At common law the only notice to which the licensee had a right was time to remove himself and his goods. I do not think that the rules give anything more. Both *Berlotti's Case*[9] and the *Canadian Pacific Railways case*[10] seem to suggest that a licensee might have the right to something more. The facts in both cases were peculiar, in particular in the C.P.R. case the Licensees were operating a public utility, a telegraph, and sudden removal would affect the convenience of the public. I do not think that these cases involve any revision of what was considered previously to be the common law on the subject.

The appeal is dismissed.

*Appeal Dismissed.*

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## LEW NGAR SOON v. REX.

[Appellate Criminal Jurisdiction (Murray-Aynsley, C.J.) August 30, 1947]

*Price Control Proclamation Section 7 — Refusing to sell goods in possession of shop-keeper — Power to confiscate goods — Criminal Procedure Code, Section 435.*

In this case the appellant had been convicted of the offence of refusing to sell one tin of sweetened condensed milk, an offence punishable under Section 7 of the Price Control Proclamation. The evidence showed that appellant professed to sell only to retailers and that he did not sell by less than a case at a time. Some property was seized by the Food Control Officers and these were disposed of before the case came for hearing. On the conviction of the appellant an order for confiscation of the goods was made.

Held, (1) that it is not reasonable to require a person who is not a retailer to sell milk by the tin and that therefore the appellant in this case was wrongly convicted under the Price Control Proclamation (2) that the order for confiscation was wrongly made as the goods were not produced before the Court and were not shown to be goods regarding which an offence appeared to have been committed or which had been used for the commission of an offence.

*MAGISTRATE'S APPEAL.*

*C. F. J. Ess* for the Appellant.

*Lim Koon Teck* (D. P. P. ) for the Respondent.

**Murray-Aynsley, C. J.** : — The charge was :—

That he, on or about the 8th day of April, 1947, at 4.15 p.m. at Provision Shop No. 201, Rochore Road, Singapore, did refuse to sell 1 tin of Sweetened Condensed Milk to a Food Control Inspector and thereby committed an offence under Section 7 (b) and punishable under Section 11 (1) of the Price Control Proclamation No. 9 of 1945.

In this case two points arise — first, whether the evidence for the prosecution disclosed an offence, secondly whether, if that were so, an order for confiscation was rightly made.

The relevant section of the Price Control Proclamation is section 7 which reads as follows :—

"Any person carrying on business in the course of which goods of any description are normally sold and who has in his possession a stock of goods of such description, who :—

(a) Falsely denies that he has such goods in his possession, or

(b) Refuses, except with the permission of the Price Controller, to sell such goods in reasonable quantities,

shall be guilty of an offence against this Proclamation :—

Provided that it shall be a good defence to a charge under paragraph (b) of this section that the accused had reasonable grounds for believing that the purchaser was unable or unwilling to make immediate payment of the price of such goods in cash".

I think that the term "reasonable quantities" must be considered in relation to goods of any description one normally sold. In this case it appears that the appellant did not profess to sell except to retailers and did not sell by less than a case at a time.

Perhaps it may be reasonably required of a retailer to sell milk by the tin. I do not think it can be reasonably required of one who is not a retailer.

I therefore quashed the conviction.

I may also point out that the confiscation depended on section 435 of the Criminal Procedure Code. By that section the property confiscated must be brought before the Court and must be property regarding which an offence appears to have been committed or which has been used for the commission of an offence.